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ABSTRACT

The booklet explains requirements for reporting abuse or neglect of children and disabled adults contained in the North Carolina Juvenile Code and the Protection of the Abused, Neglected or Exploited Disabled Adult Act. Following a brief historical review, the text discusses who must report abuse and neglect, what acts or conditions must be reported, how a report should be made, how a child is protected in an emergency, what processes might follow a report (investigations, criminal prosecutions, reports to a central registry), and what protections are afforded to those who report. An analysis of how well the reporting laws work includes a tabulation of the number of abused and/or neglected children reported to the North Carolina Central Registry annually, July 1971-June 1983, as well as total number of deaths each year attributable to abuse or neglect. Copies of selected statutes, with amendments through the 1983 Session of the North Carolina General Assembly, are provided along with a table comparing features of the child and adult reporting laws. A separate 1985-86 update contains changes in reporting requirements enacted by the 1985 General Assembly and a summary of nonlegislative developments relating to liability for failure to comply with the reporting law. (VW)

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Abuse and Neglect of Children and Disabled Adults

North Carolina's Mandatory Reporting Laws

Janet Mason

Institute of Government
The University of North Carolina at Chapel Hill
1984

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Preface

With minor changes, including incorporation of laws enacted by the 1983 Session of the North Carolina General Assembly, this booklet is a reprint of an article that appeared in the Spring 1983 issue of *Popular Government*, published by the Institute of Government. I neglected there and wish here to acknowledge with gratitude the invaluable assistance of Mary Lee Anderson and Beth Barnes in the North Carolina Department of Human Resources' Division of Social Services in providing information and commenting on initial drafts. I also want to acknowledge the many useful comments of Mason P. Thomas, Jr., an Institute of Government faculty member whose work and expertise in the fields of social services and juvenile law are well known.

Janet Mason

Chapel Hill, N.C.
Spring 1984

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Joey was placed in a day-care program in an effort to reduce his developmental retardation. He enjoyed himself and made substantial progress. Still, quite often his mother just didn't get him ready for the bus. He was absent a lot, and eventually he stopped going to the day-care center altogether. When a housing inspector visited Joey's home, he found the apartment dirty and overrun with vermin. One cold day a deputy sheriff who was dispatched to the apartment found Joey locked out, coatless and barefoot. The boy's ears and throat were infected. Both parents were intoxicated. Pots and pans caked with dried food stood on the floor. The apartment was filthy and smelled of urine.

Larry When Larry's parents took him to the emergency room, he was close to death—in severe shock. Several of his teeth were missing. His head, abdomen, and extremities were bruised. X-rays showed fractures of the skull, one rib, and the bones of both arms—some breaks recent and some several months old. The parents told the physician that Larry fell frequently. They denied hitting him. Later his mother admitted that she quite often got angry and whipped the boy with a plastic belt because he cried a lot and played in the toilet. Physicians diagnosed Larry as suffering from "battered child syndrome."

Mrs. Wall, age 80, lived in her own home with her son. Volunteers who delivered hot meals to her noticed that she frequently had bruises or cuts on her face and arms. When asked about these, she said she had fallen. The volunteers also noticed that Mrs. Wall was unusually withdrawn if her son was present when they arrived. During one visit a volunteer saw that the old woman's arm was badly bruised and extremely swollen—perhaps broken. When the volunteer offered to take her to a doctor, Mrs. Wall began to cry and finally explained that she was afraid to go because if her son found out he would be angry and might beat her or carry out his threat to put her in a nursing home.

Mr. Allen's only income was his monthly Social Security check. Because he was disabled and could not manage his own funds, his adult daughter was appointed as representative payee to receive his checks and use them for his benefit. When Mr. Allen's sister came to visit, she found that he had many unpaid bills and also found a letter from his landlord threatening eviction for unpaid rent. She discovered that the daughter had withdrawn almost all of her father's savings and had not used that money or the monthly checks to pay his expenses.

Mrs. Jones, an elderly widow, lived alone in a small, dilapidated house. Concerned because he had seen no activity at Mrs. Jones's house for several days, a neighbor visited her. The house was very dirty, and Mrs. Jones was clearly undernourished. She suffered from arthritis and diabetes and could no longer shop for food, prepare meals, and keep her home as she would like. She had no family and no friends to help her.

Introduction

Twenty years ago child abuse and neglect were largely hidden or unacknowledged problems. That is not true today. Both public awareness of the problems and resources for addressing them have increased tremendously. In 1983 the North Carolina General Assembly passed a law (G.S. Ch. 110, Art. 10) declaring that the prevention of child abuse and neglect is a priority of the state and establishing a Children's Trust Fund to support programs for the prevention of child abuse and neglect.

The substantial progress that has been made in bringing public and governmental attention to the problems of maltreated children is beginning to be matched in the area of abuse, neglect, and exploitation of elderly and disabled adults. Still, situations like those described in the foregoing examples occur with distressing frequency. Statistics from the North Carolina Department of Human Resources indicate that during the year ending June 30, 1983, county departments of social services in North Carolina investigated over 27,000 reports of alleged child abuse or neglect. More than 11,000 cases of abuse or neglect were confirmed. During the same year, over 3,100 disabled adults in North Carolina were provided protective services by county social services departments.

Each of the examples given describes a child or disabled adult who is entitled to services and protection under North

Carolina law. But whether they and others like them receive services and protection may depend on whether others—a housing inspector, a sheriff, day-care staff, emergency room physicians and staff, volunteers, a relative, a neighbor—know about the reporting laws and follow the procedures for reporting these cases to the department of social services.

North Carolina's first reporting law, passed in 1965, provided only for the voluntary reporting of child abuse or neglect. Since 1971 the law has mandated such reports. A similar law requires that instances of abuse, neglect, or exploitation of disabled adults be reported. The main purposes of both laws are (1) to identify those children and disabled adults who either are being harmed or are at risk of being harmed as a result of abuse, neglect, or—for adults—exploitation; (2) to authorize intervention on their behalf; and (3) to provide for protective services to them and, in children's cases, services for their families.

Child abuse and neglect are reported almost four times more often since 1971, when the mandatory reporting law was passed, and the number of confirmed cases has more than doubled. Still, it is estimated that these figures represent only about one-fifth of the children who are actually abused or neglected each year.[1] People tend to respond more readily to children's needs than to the problems of adults, and the adult reporting law is not known or understood as well as the law applicable to children. The maltreatment of disabled adults has not been the subject of public education and media attention to the extent that child abuse and neglect have been. For these reasons, it is likely that an even lower percentage of disabled adults in need of protection and services is reported.

Our system of justice has historically distinguished between legal duties and moral obligations. In the absence of a statute or special relationship, private citizens are not legally obligated to involve themselves in the problems of other people. The North

1. "Neglect and Abuse of Children in North Carolina, Fiscal Year 1979-80." Special Report (Raleigh: Department of Human Resources, December 1980), p. 1. See also, *Study Findings: National Study of the Incidence and Severity of Child Abuse and Neglect* (Washington: U.S. Department of Health and Human Services, September 1981).

Carolina General Assembly, by passing the mandatory reporting laws, has expressed a strong public policy of assuring that children and disabled adults who are at risk receive the services and protection they need.

This booklet will explain the reporting requirements for children contained in the North Carolina Juvenile Code[2] and those for disabled adults in the Protection of the Abused, Neglected or Exploited Disabled Adult Act.[3] Its aim is to help citizens and public officials identify those situations for which reporting is required and to address some of the questions that one who is faced with a duty to report may have.

2. N.C. GEN. STAT. § 7A-516 et seq. The reporting requirement and related provisions are found at G.S. 7A-542 through -552.

3. *Id.* § 108A-99 et seq. (Supp. 1983).

Child Abuse and Neglect

Background and the present law

North Carolina first enacted a Child Abuse Reporting Law in 1965. That law established a procedure for the voluntary reporting of child abuse and neglect. In 1971 the law was rewritten to make reporting mandatory and to create different reporting duties for professionals and for lay citizens. Specified professionals were required to report if they had reasonable cause to suspect that a child was abused or neglected. All other people were required to report only if they had actual knowledge of abuse or neglect. In 1980, the Child Abuse Reporting Law was repealed, and provisions for reporting child abuse and neglect were included in the Juvenile Code that became effective in 1980. The present law deletes the distinction between professionals and others and requires reporting by any person or institution with cause to suspect that a child is abused or neglected.

Who must report child abuse and neglect?

The law requires that everybody report suspected child abuse or neglect: "Any person or institution who has cause to suspect that any juvenile is abused or neglected shall report the case of that juvenile to the Director of the Department of Social Services

in the county where the juvenile resides or is found." The fact that the social services department is already involved with the child or the family does not mean that the case should not be reported.

The reporting requirement applies to court counselors, law enforcement officers, judges, and others whose professions may involve them in the problem of abuse or neglect—physicians, surgeons, psychologists, other health and mental health workers, social workers, teachers, and other school personnel.[4] This requirement sometimes raises troublesome issues for professionals who—because of tradition, ethics, or legal obligation—consider confidentiality to be an essential element of their relationships with clients or patients.[5] At what point and in what manner should a physician, psychologist, counselor, or therapist advise a client that the professional is required to report suspected abuse or neglect? If a school counselor assures a teenage girl that their conversation is confidential, how should the counselor react when the girl begins to describe the sexual abuse she is suffering at home? If students, patients, or clients are forewarned that

4. The duty to report suspected child abuse or neglect is repeated at G.S. 115C-400, in the General Statutes chapter concerning elementary and secondary education.

5. North Carolina law recognizes the following types of confidential communications as being privileged and protected from disclosure: physician-patient (G.S. 8-53); clergyman-communicant (G.S. 8-53.2); psychologist-client (G.S. 8-53.3); school counselor-student (G.S. 8-53.4); marital and family therapist-client (G.S. 8-53.5); husband-wife (G.S. 8-56 and -57); certified social worker delivering private social work services-client (G.S. 8-53.7, effective January 1, 1984); and registered practicing counselor-client (G.S. 8-53.8, effective January 1, 1984). Most of these privileges are not absolute, however, and disclosure can sometimes be compelled. The law specifically provides that neither the physician-patient privilege nor the husband-wife privilege may be grounds for excluding evidence of child abuse or neglect in a court proceeding (G.S. 8-53.1 and -57.1). The statutes relating to psychologists, school counselors, marital or family therapists, social workers, and counselors authorize a judge to compel disclosure of an otherwise privileged communication if disclosure is necessary for the proper administration of justice. There are no statutory provisions for a court to compel members of the clergy or attorneys to disclose confidential communications. While some states' reporting laws specifically exempt attorneys from the duty to report, North Carolina statutes do not address the attorney-client privilege. The privilege is based on the attorney's ethical duty under the Code of Professional Responsibility to preserve the confidences and secrets of a client. Attorneys pretty clearly also have a duty to report unless the suspicion of abuse or neglect results from a confidential communication by a client whom the attorney represents.

suspected abuse or neglect must be reported, will those children and parents most in need of counseling or treatment be discouraged from seeking help? There are probably no easy answers, but affected professionals—both individually and collectively—should consider such questions.

A person who suspects that a child has been abused or neglected has no duty to conduct an investigation and is not required to have actual knowledge of abuse or neglect before making a report. The department of social services is required to investigate every report to determine whether abuse or neglect has occurred. When some personal relationship or professional involvement exists, however, there will often be some discussion or inquiry about the suspected problem. The reporting law does not permit anyone—professional, friend, or relative—to make an agreement not to report in exchange for an assurance that the person suspected of abusing or neglecting the child will seek help or take any other action.

What acts or conditions must be reported?

The law defines abused and neglected juveniles rather broadly. The legal definitions also exclude some children whom almost everyone would consider to be abused or neglected. The case of any juvenile who comes within the definitions contained in the Juvenile Code must be reported.[6] For purposes of the abuse and neglect reporting requirement, a *juvenile* is any person under eighteen who is not married, not emancipated (that is, is not legally released from parental control), and not a member of the armed services. Emancipation, except when it results from marriage, can be accomplished only through a judicial proceeding. Therefore, the reporting law covers unmarried children under eighteen who live independently or have been declared emancipated by their parents unless they have also been declared emancipated by a court.

6. In addition to abused and neglected juveniles, the Juvenile Code addresses dependent, undisciplined, and delinquent juveniles. These children are not covered by the reporting requirement, however, unless they are also suspected of being abused or neglected.

A *neglected juvenile* is one who:

1. Does not receive proper care, supervision, or discipline from his parent, guardian, custodian, or caretaker;
2. Has been abandoned;
3. Is not provided necessary medical care or other remedial care recognized under state law;
4. Lives in an environment injurious to his welfare; or
5. Has been placed for care or adoption in violation of law.

This definition has withstood judicial scrutiny when challenged on the ground that it was unconstitutionally vague. The court found that the terms used in the definition were given "precise and understandable meaning by the normative standards imposed upon parents by our society."[7] The court said, in effect, that people can use common sense and generally accepted values to determine what is meant by proper care, necessary medical care, or an injurious environment.

It is not necessary that a child actually suffer physical harm or be threatened with physical harm before he can be found to be neglected. For instance, proper care and supervision include provision of a basic education, and failure to enroll a child in school can be neglect.[8] While "necessary medical or remedial care" has not been precisely defined, the North Carolina Court of Appeals has held that a child whose mother refused to allow treatment for the child's severe hearing and speech defects was neglected.[9] A newborn baby placed for care or adoption with a nonrelative without approval from the department of social services or a licensed child-placing agency can be found to be neglected. Such placements violate the statute requiring agency approval for the placement of children under six months of age.[10]

The Juvenile Code defines an *abused juvenile* in terms of the conduct of his parent or whoever is responsible for the child's care (his caretaker). A *caretaker* may be a relative, stepparent, foster parent, house parent, cottage parent, or person who super-

7. *In re* Biggers, 50 N.C. App. 332, 274 S.E.2d 236, 241-42 (1981).
8. *In re* McMillan, 30 N.C. App. 235, 226 S.E.2d 693 (1976).
9. *In re* Huber, 57 N.C. App. 453, 291 S.E.2d 916 (1982).
10. N.C. GEN. STAT. § 14-320.

vises a child in a child-care facility. School teachers, babysitters, and housekeepers who also provide child care are generally not considered to be included in the caretaker category, but day-care workers or operators are.[11] The fact that a child has been injured or mistreated does not, by itself, bring him within the definition of abused juvenile for purposes of the reporting law. A child who is assaulted or injured by another child or by a neighbor, for instance, would not come within the reporting requirement unless there was some evidence that the parent or caretaker had allowed or contributed to the injury. Cases of mistreatment by someone other than a parent or caretaker may well be the subject of criminal investigation and prosecution. Those cases should be reported to law enforcement officials, but they do not come within the Juvenile Code provisions aimed at getting protective services to the child and his family.[12] Until there is some indication to the contrary, it is assumed that parents and caretakers will act responsibly to prevent or respond to harm that others may cause the child.

In addition to the child who is physically battered by a parent or caretaker, the definition of abused juvenile covers children who are subjected to a substantial risk of physical injury, children who are sexually abused or exploited, and juveniles who commit certain criminal offenses at the direction of—or with the encouragement or approval of—a parent or caretaker. The Juvenile Code that went into effect in 1980 expanded the definition of abused juvenile to include children who are emotionally damaged and are denied treatment. For purposes of the reporting law, a juvenile is

11. *Id.* § 7A-542 was amended in 1981 to provide specifically that the article relating to screening and reporting requirements for child abuse and neglect applies to day-care facilities and day-care plans as defined in G.S. 110-86. Therefore, the conduct of a day-care facility operator or a person who operates a day-care plan is viewed just like the conduct of a parent or caretaker for purposes of reporting suspected child abuse or neglect.

12. The reporting law does not require that these cases be reported to the county department of social services, and county departments are not required or authorized to investigate them. However, effective October 1, 1983, a social services director who receives information that a juvenile has been physically harmed in violation of any criminal statute by anyone other than the child's parent or caretaker must report that information to the district attorney within 24 hours. N.C. GEN. STAT. § 7A-548, as amended by N.C. Sess. Laws 1983, Ch. 199.

abused when his parent or other person responsible for his care does any of the following:

1. Inflicts or allows to be inflicted on the juvenile by other than accidental means a physical injury that causes or creates a substantial risk of death, disfigurement, impairment of physical health, or loss or impairment of function of any bodily organ; or
2. Creates or allows to be created by other than accidental means a substantial risk of physical injury to the juvenile that would be likely to cause death, disfigurement, impairment of physical health, or loss or impairment of the function of any bodily organ; or
3. Commits or allows the commission of any sexual act on a juvenile in violation of law or commits, permits, or encourages any act of prostitution with or by the juvenile; or
4. Creates or allows to be created serious emotional damage to the juvenile and refuses to permit, provide for, or participate in treatment (serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others); or
5. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.[13]

Report if in doubt

While the legal definitions of abuse and neglect are important, a person who is concerned about a maltreated child but unsure whether the situation comes within the definitions should make a report. If the report is made in good faith, there is no risk involved in reporting a case that turns out not to be covered by the law. If the child needs help, the department of social services may be able to make appropriate referrals or suggestions even if the case is not one it is authorized to investigate.

13. N.C. GEN. STAT. § 7A-517(1).

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How should a report be made?

A report of suspected abuse or neglect can be made in person, by telephone, or in writing. It must be made to the department of social services in the county where the juvenile lives or is found. The report should include any information that would be helpful in determining the need for the agency or the court to take action to protect the child, and it should include as many of the following items as the reporter knows: the name and address of the child and the name and address of his parent, guardian, or caretaker; the child's age; his whereabouts; and the nature and extent of any injury or condition of abuse or neglect. The law requires that the reporter give his name, address, and telephone number. But even if the person who reports refuses to identify himself, the report must be investigated. The reporter's identity and the information reported are confidential, and the department of social services may disclose it only if necessary to carry out the agency's responsibility to provide services. For instance, a reporter's identity might not be protected if he had information that had to be presented to a court—he could be called as a witness. But the agency would not reveal the reporter's identity to the parents or anyone else in response to a mere inquiry.

How is the child protected in an emergency?

Ordinarily a child cannot be taken from the parents' custody against the parents' wishes without a court order. However, either a social services worker or a law enforcement officer may take immediate physical custody of a child without a court order if it appears that the child will be injured or that custody cannot be taken later if removal is delayed while a court order is being obtained.

Medical personnel can seek emergency authorization to keep custody of a child suspected of being abused. Abuse is often first identified when a child is taken to a medical facility for diagnosis or treatment. If a physican determines and certifies in writing either (1) that he believes that a child has been abused and needs to remain for treatment or (2) that the medical evaluation in-

dicates that it is unsafe for the child to return to his parent or caretaker, the physician or the facility's administrator can contact a district court judge, or someone designated by the judge, to request authority to keep the child. The social services department must be notified, and it must immediately begin an investigation. Unless the parent consents to the child's treatment at the facility, a petition must be filed and a temporary court order obtained within twelve hours.

What happens after a report is made?

Investigation; protective services; civil court. The county social services department is required to conduct a prompt, thorough investigation of every reported instance of suspected abuse or neglect.[14] The investigation must include a visit to the child's home. When it receives a report of abuse, the department may notify a local law enforcement agency. That agency may investigate the report, and it is required to assist with the investigation if the department of social services asks for help. In some cases the child may have to be removed from his home for his own protection. He may be removed with his parent's consent, or the department may file a petition requesting the court to authorize removal. If a social services worker or a law enforcement officer removes the child in an emergency without a court order, the department must file a petition and obtain a court order within twelve hours if the child is to be held longer than that period.

The Division of Social Services in the North Carolina Department of Human Resources issues policy statements and procedures for county departments of social services that supplement and explain the legal requirements. Although the law requires only a "prompt and thorough investigation," the Family Services Manual sets the following *maximum* time limits for beginning an investigation of a report of suspected child abuse or

14. The duty to investigate applies only to cases of abuse and neglect as those terms are defined in the Juvenile Code. *See* footnote 12 and related text, *supra*.

neglect: (1) if the report is suspected abuse, 24 hours; and (2) if the report is suspected neglect, 72 hours.[15]

In any case in which the department's investigation reveals that a child is abused or neglected but immediate removal from the home is not necessary, casework, counseling, and other protective services must be offered or arranged. If the family refuses these services or if protective services do not adequately protect the child, the department may petition the court to intervene for the child's protection. Petitions are filed in only a small percentage of the cases reported and investigated; most cases are handled without court action.

The filing of a petition begins a juvenile proceeding in the district court. An abuse or neglect petition can be filed only by a county department of social services. Juvenile proceedings are civil (that is, not criminal) in nature and are concerned with the condition and needs of the child, not with the guilt or innocence of the parent or caretaker. In every abuse or neglect proceeding, the court appoints a special representative—a guardian ad litem—to look after the child's interest. The parents and the department are usually represented by counsel; indigent parents have a right to court-appointed counsel. Parents may be required to reimburse the state for the fee of appointed counsel or of the child's guardian ad litem.

The court conducts a hearing to determine whether the allegations of abuse or neglect are true. If it finds that they are true, it proceeds—or holds another hearing later—to determine the most appropriate plan for responding to the child's needs. An abused or neglected child is not automatically removed from the parents' custody—the law favors leaving the child in his home when it is safe to do so. But the court may place the child in the social services department's custody or in the custody of a relative or other person or agency. If the child is removed from his home, the social services department must provide him and his family with services that are aimed at returning him home,

15. *Children's Services*, Vol. I of the *Family Services Manual* (Raleigh: North Carolina Department of Human Resources, Division of Social Services, October 1, 1980), § 1453, p. 6.

and the court must periodically review the case. In severe cases, however, child abuse or neglect may be grounds (in a different court action) either to terminate the parents' rights completely and free the child for adoption[16] or to prosecute the parents in a criminal proceeding.

Criminal prosecution. If the social services department finds evidence that a juvenile has been abused, it must immediately report its findings in writing to the district attorney. If the district attorney decides that criminal prosecution of the parent or caretaker is appropriate, he can request the director of social services to appear before a magistrate to seek a criminal warrant. Any citizen who thinks that criminal abuse has occurred may also seek the issuance of a criminal warrant.

Child abuse may be a misdemeanor punishable by a fine, imprisonment for up to two years, or both.[17] Or it may be a felony punishable by a fine, imprisonment for up to five years, or both.[18] Misdemeanor child abuse involves inflicting or allowing the infliction of physical injury, or creating or allowing a substantial risk of physical injury, by other than accidental means. Felony child abuse includes the intentional infliction of serious physical injury that results in permanent disfigurement, bone fracture, substantial impairment of physical health, or substantial impairment of the function of any of the child's organs, limbs, or appendages. Felony child abuse also includes committing, permitting, or encouraging any act of prostitution with or by a juvenile.[19] These criminal offenses apply only to the abuse of a child younger than sixteen years of age by a parent or other person who cares for or supervises him. A parent or legal guardian who commits or allows the commission of any sexual act on a child under 16 is also guilty of felony child abuse.[20] Contributing

16. A parent's abuse or neglect of a child is one of six grounds for terminating a parent's rights under G.S. Ch. 7A, Art. 24B.

17. N.C. GEN. STAT. § 14-318.2.

18. *Id.* § 14-318.4.

19. *Id.*, as amended by N.C. Sess. Laws 1983, Ch. 916, effective October 1, 1983.

20. *Id.*

to the neglect or abuse of a juvenile—whether by the parents or others—is a misdemeanor.[21]

Whether a parent or caretaker is criminally prosecuted for abuse rests with the district attorney. His views may be influenced by the attitude of the social services department and the community. Professionals disagree about the appropriateness of dealing with abuse and neglect in the criminal courts. Some maintain that criminal prosecution has a deterrent effect on the defendant and others; they also contend that all criminal conduct should be punished, and they fear that law enforcement personnel will be reluctant to become involved if abusers are not prosecuted. Others argue that (1) abuse and neglect are psychosocial problems calling for a nonpunitive response that focuses on protecting the child and preserving the family structure; (2) prosecution may increase existing hostility and resentment and lead to further abusive conduct; (3) prosecution and conviction may break up the family; and (4) prosecution, especially if it fails, may make it difficult to involve a family in treatment and services.[22]

Central registry. The county departments of social services send every report of alleged abuse or neglect to a statewide central registry required by law and maintained by the North Carolina Department of Human Resources. Created in 1971, the registry provides data for studying the extent of abuse and neglect in North Carolina. It makes possible the identification of children and families who are involved in repeated instances of abuse or neglect. Data collected by the registry are confidential and may not be used in a court proceeding unless the court specifically orders such use.

Notification and review. If the social services department does not file a juvenile petition within five working days after it

21. *Id.* § 14-316.1.

22. *Leader's Manual—A Curriculum on Child Abuse and Neglect*, prepared by J. A. Reyes Associates, Inc., for the National Center on Child Abuse and Neglect (HEW), September 1979, reprinted in *Advocating for Children in the Courts* (American Bar Association National Institute, 1979), p. 338.

received a report of suspected abuse or neglect, the person who made the report is entitled to written notice of whether the department found that abuse or neglect occurred and, if so, what specific action the department is taking to protect the child's welfare. If the reporter is not satisfied with the department's action, he has five working days after he receives the notice within which to ask the district attorney to review the department's decision not to file a petition. When the district attorney receives such a request, he is to confer with the reporter, the social worker, the child if practicable, and anyone else who has relevant information. He then either affirms the department's decision or authorizes the filing of a juvenile petition.

The procedures for review by the district attorney balance another provision in the Juvenile Code that allows only the social services department to file an abuse or neglect petition. Before 1980, any person could file a petition. The review procedure gives a person who (a) knows or strongly suspects that a child is abused or neglected and (b) feels that the department's response is inadequate, more effective recourse than simply repeating the same report to the same agency.

Protection of those who report. A person who makes a report of suspected child abuse or neglect is immune from civil or criminal liability under state law if he made the report in good faith. Immunity is also guaranteed to anyone who cooperates with the social services department in its investigation, testifies in any court action resulting from the report, or participates in authorized procedures or programs for screening and responding to complaints of abuse or neglect. The law cannot prevent parents or others from suing those who report, but the likelihood of such suits is greatly lessened by this immunity. In order to succeed, the person who sues must prove that whoever made the report or cooperated in the investigation acted in bad faith—that is, with malice.

What are the consequences of not reporting?

The most obvious and serious consequence of not reporting

suspected child abuse or neglect is that a child may unnecessarily suffer. The cost to the child, the family, and ultimately to society may be immense—especially when compared with the minuscule effort involved in alerting the social services department to a need for protective services. In some cases the consequences may be insignificant—the suspicion may be unfounded, or the department of social services may already be involved, or someone else may have reported— but the law does not, on the basis of such rationalizations, excuse one from the duty to report.

North Carolina, unlike some other states, does not prescribe by statute any civil or criminal penalty for not reporting child abuse or neglect. In its final report to the 1979 General Assembly, the Juvenile Code Revision Committee indicated that it had considered recommending a penalty for failure to report but concluded that the threat of civil suit should be sufficient incentive for institutions and others to comply with the law.[23] There are no reported cases in North Carolina—and very few nationally—concerning liability for failure to report child abuse or neglect. Still, under the general principles of the law of negligence, civil liability is quite possible if a child is harmed as a result of someone's violation of the statutory duty to report. With the increasing availability and expertise of guardians ad litem representing abused and neglected children and the general rise in the recognition of children's rights, it would not be surprising to see increased attention paid to liability issues in cases in which children are seriously harmed.

23. *The Final Report of the Juvenile Code Revision Committee* (Raleigh, N.C., January 1979).

Disabled Adults Who Need Protective Services

Background and the present law

The Protection of the Abused, Neglected, or Exploited Disabled Adult Act represents an attempt to assure that protective services are provided, if needed, to any adult who is physically or mentally incapacitated and is unable to obtain services for himself. As first enacted in 1973, the law applied only to abused and neglected adults aged 65 or older. In 1975 it was expanded to include disabled adults of any age and to address problems of exploitation as well as abuse and neglect. In 1981 the act was recodified with other social services laws. The mandatory reporting provision is central to its purposes.

Who must report?

The act provides that any person who has reasonable cause to believe that a disabled adult is in need of protective services must report the case to the county social services department.[24] It makes no exceptions and recognizes no justifications for failing to report. As with the duty to report child abuse and neglect, the duty to report cases of disabled adults in need of protective ser-

24. N.C. GEN. STAT. § 108A-102 (Supp. 1983).

vices generally overrides the otherwise confidential or privileged nature of a communication.[25] The phrasing of the requirement to report suggests that the duty to report arises somewhere between a mere suspicion and actual knowledge that a disabled adult needs protection.

What must be reported?

Cases of disabled adults who lack essential services and are in need of protective services must be reported. Recognizing who those people are requires common sense and good judgment. The act's list of definitions[26] gives key terms precise and sometimes special meaning. For purposes of protecting disabled adults, some terms—abuse, neglect, protective services—mean something different from the same terms when used in connection with children.

Disabled adults are all persons in North Carolina who (a) are 18 or older or lawfully emancipated and (b) are physically or mentally incapacitated. Although the law describes incapacity in terms of specified causes, many of the listed causes require medical diagnosis, and it is difficult to imagine a cause of incapacity that is not covered by the statute. The list includes mental retardation, organic brain damage, conditions that result from accident, mental or physical illness, consumption of substances (presumably drugs, including alcohol), and other impairments.

A *disabled adult* is in *need of protective services* if he cannot perform or obtain essential services for himself and has no relative or friend who is willing and able to obtain or perform the services for him.

Essential services include social, medical, psychiatric, psychological, or legal services necessary to protect the person's rights and resources and to maintain his physical and mental well-being. Essential services include at least the following: medical care for physical and mental health needs; assistance in personal hygiene; food, clothing, adequately heated and ventilated shelter;

25. *See* footnote 5 and related text, *supra*.

26. N.C. GEN. STAT. § 108A-101 (Supp. 1983).

protection from health and safety hazards; and protection from abuse, neglect, and exploitation.

A *disabled adult* is *abused* if he is unreasonably confined, if his caretaker willfully deprives him of necessary services, or if he is the victim of willfully inflicted physical pain, injury, or mental anguish.

A *caretaker* may be a relative who is responsible for the care of a disabled adult or anyone who assumes such responsibility voluntarily or by contract.

Exploitation is the illegal or improper use of a disabled adult or his resources for another's profit or advantage.

A *neglected disabled adult* is one who (a) lives alone and cannot provide for himself the services that are necessary for his physical or mental health or (b) is not receiving services from his caretaker. A special category of disabled adults who are not receiving services from their caretakers, and are thereby neglected, includes any person who

1. Is a resident of a state-owned hospital for the mentally ill or a center for the mentally retarded;
2. Is, in the opinion of the professional staff, mentally incompetent to give consent to medical treatment;
3. Needs medical treatment; and
4. Has no court-appointed legal guardian and no guardian as defined in the statute concerning hospitals for the mentally disordered.[27]

These definitions, while of questionable value in making the reporting duty easy to understand, demonstrate the legislature's intention that no disabled adult who lacks essential services and needs protective services be overlooked.

How should a report be made?

A report may be made orally or in writing to the county social services department. It should include the disabled adult's

27. *Id.* § 122-36(n). The referenced definition of "guardian" includes a relative or friend whom the patient designates as "closest relative" when he is admitted, but it does not include any person who files an affidavit or testifies in favor of the patient's involuntary commitment.

name, address, and age; his caretaker's name and address; the nature and extent of any injury or condition of abuse or neglect; and other pertinent information. The reporter is not required to give his name, but the department may be able to respond to the report more effectively if it can get in touch with the reporter after the report is made.

What happens after a report is made?

The department of social services must make a prompt and thorough evaluation of each reported case, including a visit with the disabled adult and consultation with others who know of the case. Staff of local mental health clinics, health departments, and other public or private agencies are to help the department carry out its duties, including immediate or in-home evaluations when necessary. The department must (a) make a written report stating whether the disabled adult needs protective services and (b) report back to the person who reported the case concerning its determination. Except for the requirement that the evaluation be prompt, the law sets no time limit for completing the evaluation or notifying the reporter. There is not a procedure like the one available in child abuse and neglect cases for having the department's determination reviewed.

The state manual that sets out policies and procedures for county departments of social services supplements the legal requirement for a "prompt and thorough evaluation." It includes the following maximum time limits for beginning an evaluation of a report that a disabled adult needs protective services: (a) if the report involves an emergency, 24 hours; and (b) all other reports, 72 hours.[28]

The statute defines an "emergency" as a situation in which the disabled adult (a) is in substantial danger of death or irreparable harm if protective services are not provided immediately; (b) is unable to consent to services; and (c) has no responsi-

28. "Protective Services for Adults," *Adult and Family Services*, Vol. V, *Family Services Manual* (Raleigh: North Carolina Department of Human Resources, Division of Social Services, November 1, 1983), § 6510, pp. 8-9.

ble, able, or willing caretaker available to consent to emergency services.[29]

If protective services are needed, the department is to provide or arrange for them immediately if the disabled adult consents. If the disabled adult has the capacity to consent but does not consent, or consents and then changes his mind, the department may not impose services on him. For instance, a competent disabled adult may not be forcibly taken to a doctor for needed treatment if he does not want to go. If the disabled adult does not have the capacity to consent—if he is not able to make or communicate responsible decisions about his own needs—the department may provide protective services only after a court determines that the person lacks capacity to consent and needs the services.

The cost of any essential services provided is to be reimbursed by the disabled adult if he is financially able to pay for them. The act provides that if the disabled adult is financially incapable of paying for essential services, they are to be provided "at no cost to the recipient."

The act authorizes county departments of social services to bring four different kinds of civil district court proceedings for the protection of disabled adults. (1) If the adult consents to protective services and a caretaker refuses to allow the services to be provided, the department can petition the court to enjoin the caretaker from interfering. The other three proceedings relate to adults who lack capacity to consent. (2) The department may petition the court for an order authorizing the provision of services. The disabled adult has a right to at least five days' notice of the hearing and a right to be represented at the hearing. (3) The court can authorize limited emergency services without the delay involved in the procedural requirements of a regular hearing. (4) The department can petition for an order to make the disabled adult's financial records available for inspection and, in cases involving financial exploitation, to freeze his assets. After, or instead of, initiating any of these proceedings, the department may also petition the court for the appointment of a legal guardian for an incompetent adult.

29. N.C. GEN. STAT. § 108A-101(g) (1983 Supp.).

If the department finds that someone has abused, neglected, or exploited a disabled adult, it must notify the district attorney. But the only statute specifically making abuse, neglect, or exploitation of a disabled adult a crime applies only in Haywood County.[30] General criminal law provisions—such as those regarding assault, battery, larceny—apply to many situations addressed by the act. In addition, assault on a handicapped person is a criminal offense that carries heavier penalties than assault on others.[31] It is also a misdemeanor for an adult to neglect to support his or her parents, if (1) the adult has sufficient income after providing for his own family and (2) the parent is sick or not able to work and has insufficient means or ability to support himself.[32] Still, especially in the area of neglect, acts that the legislation aims to address may not necessarily be subject to criminal prosecution.

Is the person who makes a report protected from liability?

Under state law, anyone who makes a report, testifies in a court action, or participates in a required evaluation under the Abused, Neglected or Exploited Disabled Adult Act is immune from civil or criminal liability, unless he acts in bad faith or with a malicious purpose.

What are the consequences of not reporting?

As with the failure to report child abuse and neglect, the most serious consequence of not reporting the case of a disabled

30. N.C. Sess. Laws 1983, Ch. 901, added a new G.S. 14-32.2, effective October 1, 1983, making the abuse, neglect, or exploitation of a disabled adult by his caretaker or by the agent or employee of the caretaker a misdemeanor. It incorporates key definitions from the Protection of the Abused, Neglected, or Exploited Disabled Adult Act. As introduced, the law applied statewide; but as enacted near the end of the 1983 Session of the General Assembly, it applies only to Haywood County. It is likely that this subject will come before the legislature again for further consideration.

31. N.C. Gen. Stat. § 14-32.1.

32. *Id.* § 14-326.1.

adult in need of protective services is the harm that may be caused to someone who needs protection. The statute provides no civil or criminal penalty for not reporting. Civil liability is possible, however, under ordinary theories of negligence if the disabled adult is harmed as a result of the failure to report.

How Well Do the Reporting Laws Work?

Table 1 shows the number of cases of reported and confirmed child abuse and neglect recorded with the North Carolina Central Registry each year since the registry was created and the mandatory reporting law enacted in 1971. It is difficult to draw very definite conclusions about the relationship between these figures and the actual incidence of abuse and neglect in North Carolina. The increases in reported cases soon after the mandatory law passed must be attributed in part to increased public awareness and willingness to report, expansion of the definitions of abuse and neglect, and improved accountability of the state and county programs. To some extent, the decrease in the rate of increase of reported cases probably represents a leveling-off of these same factors. The recent actual decrease in the number of confirmed cases of abuse and in the number of reported and confirmed cases of combined abuse and neglect are cause for cautious optimism at most.

The most recent detailed analysis of the reporting of child neglect and abuse in North Carolina, prepared by the Division of Social Services,[33] analyzed data from the Central Registry for fiscal year 1979-80. About 30 per cent more cases were reported

33. "Neglect and Abuse of Children in North Carolina," *op. cit. supra* note 1.

in that year than in the preceding year; the proportion was 14.11 reports per 1,000 children in the population. Of the cases reported, 41.8 per cent—or 5.91 cases per 1,000 children—were confirmed. By far the most reports—over 40 per cent—were made by friends, neighbors, and relatives. School and law enforcement personnel respectively accounted for 17 per cent and 8 per cent of the reports. Fewer than 4 per cent of the reports were made by physicians, although medical personnel generally made over 10 per cent of the reports.

Among the data collected by the Central Registry are stress factors identified as being present in families in which abuse and neglect occur. In fiscal year 1979-80 the major stress factors reported were (1) continuous unrelieved responsibility for one or more children, (2) lack of parenting skills—unrealistic expectations and ignorance of what is normally expected of a child at various stages of development, and (3) inadequate income or employment problems. Other frequently reported stress factors included mental health problems, alcohol or drug dependence, family discord, social isolation, and inadequate housing. Over 90 per cent of the reported cases involved alleged abuse or neglect by the child's biological parents. Stepparents were the alleged perpetrators in 3 per cent of the cases, and grandparents in 2 per cent. Fewer than 1 per cent of the allegations involved adoptive or foster parents.

There is no central registry or other comparable data base from which to get a picture of the state's experience under the reporting requirement of the Adult Protective Services Act. Figures available from the Division of Social Services for the first quarter of 1982 do provide a profile of the disabled adults who received protective services from county departments of social services during that three-month period. Of the 940 adults served, most had independent living arrangements (655) or lived in the home of a parent, guardian, or relative (187). Others lived in group homes or other residential facilities. Very few (29) had been adjudicated incompetent. Over half (526) were 65 years old or older. More women (595) than men (345) were served. During the year that ended June 30, 1983, a total of 3,100 disabled adults in North Carolina received protective services.

Table 1

Number of Children Reported to the North Carolina Central Registry Annually, July 1971 through June 1983

Date	Abused		Neglected		Both N & A		Total		Deaths		
	Reported	Confirmed	Reported	Confirmed	Reported	Confirmed*	Reported	Confirmed	A	N	A/N
July 1, 1971—June 30, 1972	1,100	657	5,775	3,740			6,875	4,397	25	3	
July 1, 1972—June 30, 1973	1,602	746	8,462	5,351			10,064	6,097	10	13	
July 1, 1973—June 30, 1974	1,900	711	9,572	4,987			11,278	5,635	8	11	
*July 1, 1974—June 30, 1975**	1,946	1,050	9,331	4,724			11,277	5,774	13	12	
July 1, 1975—June 30, 1976	2,112	1,068	10,547	4,984	1,309	221	13,968	6,273	4	9	
July 1, 1976—June 30, 1977	2,180	987	9,415	5,047	3,916	320	15,511	6,354	8	2	
July 1, 1977—June 30, 1978	3,426	1,389	13,265	5,267	1,989	780	18,686	7,438	7	5	
July 1, 1978—June 30, 1979	3,589	1,548	14,505	6,175	2,110	900	20,204	8,623	4	6	
July 1, 1979—June 30, 1980	4,831	1,910	18,452	7,855	2,711	1,126	25,994	10,891	6	7	3
July 1, 1980—June 30, 1981	5,093	1,963	19,970	8,451	2,454	1,007	27,518	11,421	6	4	2
July 1, 1981—June 30, 1982	5,301	1,956	19,417	8,141	2,263	864	26,981	10,961	4	5	4
July 1, 1982—June 30, 1983	5,586	1,839	19,444	8,792	2,187	672	27,217	11,103	3	4	1

*Category of Both Neglect and Abuse added December 1, 1975.

Children and disabled adults who are abused, neglected, or exploited exist in every county in North Carolina. In every North Carolina county there are social workers trained to investigate reported cases and to identify and respond to those who need help. Judicial procedures are available for cases that require court intervention. Continued efforts are needed to increase our understanding of why abuse and neglect occur, to develop more effective means of early identification and appropriate intervention, and to provide better resources for responding to these problems. Too often, however, the connection between available resources and the children or disabled adults who need help is made only after substantial harm or suffering has already occurred. Undoubtedly, in some cases the connection is never made or is made only when it is literally too late for the child or adult. In the twelve-year period ending June 30, 1983, at least 189 children in North Carolina died as a result of abuse or neglect. We will never know how often in those cases there was someone who knew or suspected that the child was being abused or neglected but did not comply with the law's requirement that a report be made. It is valid—and overwhelmingly sad—to assume that for some of those children, and for some unknown number of disabled adults, a phone call would have meant life itself. For others, your phone call may provide the only link between a person in need and the services and protection they deserve.

Selected North Carolina Statutes

The following statutes include amendments through the 1983 Session of the North Carolina General Assembly

North Carolina Juvenile Code

(Selected portions. Readers should consult the entire Juvenile Code for complete provisions regarding judicial proceedings.)

§ 7A-517. Definitions.

Unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused Juveniles. — Any juvenile less than 18 years of age whose parent or other person responsible for his care:

a. Inflicts or allows to be inflicted upon the juvenile a physical injury by other than accidental means which causes or creates a substantial risk of death, disfigurement, impairment of physical health, or loss or impairment of function of any bodily organ; or

b. Creates or allows to be created a substantial risk of physical injury to the juvenile by other than accidental means which would be likely to cause death, disfigurement, impairment of physical health, or loss or impairment of the function of any bodily organ; or

c. Commits or allows the commission of any sexual act upon a juvenile in violation of law; commits, permits or encourages any act of prostitution with or by the juvenile; or

d. Creates or allows to be created serious emotional damage to the juvenile and refuses to permit, provide for, or participate in

treatment. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or

e. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

• • • •

(5) Caretaker. — Any person other than a parent who is in care of a juvenile, including any blood relative, stepparent, foster parent, or house parent, cottage parent or other person supervising a juvenile in a child-care facility.

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(11) Custodian. — The person or agency that has been awarded legal custody of a juvenile by a court.

(12) Delinquent Juvenile. — Any juvenile less than 16 years of age who has committed a criminal offense under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(13) Dependent Juvenile. — A juvenile in need of assistance or placement because he has no parent, guardian or custodian responsible for his care or supervision or whose parent, guardian, or custodian is unable to provide for his care or supervision.

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(16.1) In Loco Parentis. — A person acting in loco parentis means one, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

• • • •

(20) Juvenile. — Any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States. For the purposes of subdivisions (12) and (28) of this section, a juvenile is any person who has not reached his sixteenth birthday and is not married, emancipated, or a member of the armed forces. A juvenile who is married, emancipated, or a member of the armed forces, shall be prosecuted as an adult for the commission of a criminal offense. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(21) Neglected Juvenile. — A juvenile who does not receive proper care, supervision, or discipline from his parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law.

(22) Petitioner. — The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

• • • •

(28) Undisciplined Juvenile. — A juvenile less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his

parent, guardian, or custodian and beyond their disciplinary control; or who is regularly found in places where it is unlawful for a juvenile to be; or who has run away from home.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified. (1979, c. 815, s. 1; 1981, c. 336; c. 359, s. 2; c. 469, ss. 1-3; c. 716, s. 1.)

§ 7A-542. Protective services.

The Director of the Department of Social Services in each county of the State shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

Protective services shall include the investigation and screening of complaints, casework or other counseling services to parents or other caretakers as provided by the director to help the parents or other caretakers and the court to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents or caretakers, and to preserve and stabilize family life.

The provisions of this Article shall also apply to day-care facilities and day-care plans as defined in G.S. 110-86. (1979, c. 815, s. 1; 1981, c. 359, s. 1.)

§ 7A-543. Duty to report child abuse or neglect.

Any person or institution who has cause to suspect that any juvenile is abused or neglected shall report the case of that juvenile to the Director of the Department of Social Services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse or neglect and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give his name, address, and telephone number. Refusal of the person making the report to give his name shall not preclude the Department's investigation of the alleged abuse or neglect.

In the case of any report of abuse, the Director of Social Services, upon receipt of the report, may immediately provide the appropriate local law-enforcement agency with information on the nature of the report. The law-enforcement agency may investigate the report, and upon request of the Director of the Department of Social Services, the law-enforcement agency shall provide assistance with the investigation. (1979, c. 815, s. 1.)

§ 7A-544. Investigation by Director; notification of person making the report.

When a report of abuse or neglect is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. The investigation and

evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services shall be held in strictest confidence by the Department.

If the investigation reveals abuse or neglect, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any of these duties, the Director may utilize the staff of the county Department of Social Services or any other public or private community agencies that may be available. The Director may also consult with the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse or neglect when requested by the Director.

Unless a petition is filed within five working days after receipt of the report of abuse or neglect, the Director shall give written notice to the person making the report that:

(1) There is no finding of abuse or neglect; or

(2) The county Department of Social Services is taking action to protect the welfare of the juvenile and what specific action it is taking.

The notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive his right to this notification and no notification is required if the person making the report does not identify himself to the Director. (1979, c. 815, s. 1.)

§ 7A-545. Evaluation for court.

In all cases in which a petition is filed, the Director of the Department of Social Services shall prepare a report for the court containing a home placement plan and a treatment plan deemed by the Director to be appropriate to the needs of the juvenile. The report shall be available to the judge immediately following the adjudicatory hearing. (1979, c. 815, s. 1.)

§ 7A-546. Request for review by prosecutor.

The person making the report shall have five working days, from receipt of the decision of the Director of the Department of Social Services not to petition the court, to notify the prosecutor that he is requesting a review. The prosecutor shall notify the person making the report and the Director of the time and place for the review and the Director shall immediately transmit to the prosecutor a copy of the investigation report. (1979, c. 815, s. 1.)

§ 7A-547. Review by prosecutor.

The prosecutor shall review the Director's determination that a petition

should not be filed within 20 days after the person making the report is notified. The review shall include conferences with the person making the report, the protective services worker, the juvenile, if practicable, and other persons known to have pertinent information about the juvenile or his family. At the conclusion of the conferences, the prosecutor may affirm the decision made by the Director or may authorize the filing of a petition. (1979, c. 815, s. 1; 1981, c. 469, s. 7.)

§ 7A-548. Duty of county Department of Social Services to report evidence of abuse.

If the Director finds evidence that a juvenile has been abused as defined by G.S. 7A-517(1), he shall immediately make a written report of the findings of his investigation to the district attorney, who shall determine if criminal prosecution is appropriate, and who may request the Director or his designee to appear before a magistrate.

If the Director receives information that a juvenile has been physically harmed in violation of any criminal statute by any person other than the juvenile's parent or other person responsible for his care, he shall make an oral or written report of that information to the district attorney or the district attorney's designee within 24 hours after receipt of the information. The district attorney shall determine whether criminal prosecution is appropriate.

The Director of the Department of Social Services shall submit a report of alleged abuse or neglect to the central registry under the policies adopted by the Social Services Commission. (1979, c. 815, s. 1; 1983, c. 199.)

§ 7A-549. Authority of medical professionals in abuse cases.

(a) Any physician or administrator of a hospital, clinic, or other medical facility to which a suspected abused juvenile is brought for medical diagnosis or treatment shall have the right, when authorized by the chief district court judge of the district or his designee, to retain physical custody of the juvenile in the facility when the physician who examines the juvenile certifies in writing that the juvenile who is suspected of being abused should remain for medical treatment or that, according to his medical evaluation, it is unsafe for the juvenile to return to his parent, guardian, custodian, or caretaker. This written certification must be signed by the certifying physician and must include the time and date that the judicial authority to retain custody is given. Copies of the written certification must be appended to the juvenile's medical and judicial records and another copy must be given to the juvenile's parent, guardian, custodian, or caretaker. The right to retain custody in the facility shall exist for up to 12 hours from the time and date contained in the written certification.

(b) Immediately upon receipt of judicial authority to retain custody, the physician, the administrator, or his designee shall so notify the director of social services for the county in which the facility is located. The director shall treat this notification as a report of suspected abuse and shall immediately begin an investigation of the case.

(1) If the investigation reveals (i) that it is the opinion of the certifying physician that the juvenile is in need of medical treatment to cure or alleviate physical distress, or to prevent the juvenile from suffering serious physical harm which might result in death, disfigurement, or substantial impairment of bodily function, and (ii) that it is the opinion of the physician that the juvenile should for these reasons remain

in the custody of the facility for 12 hours, but (iii) that the juvenile's parent, guardian, custodian or caretaker cannot be reached or, upon request, will not consent to the treatment within the facility, the director shall within the initial 12-hour period file a juvenile petition alleging abuse and setting forth supporting allegations and shall seek a nonsecure custody order. A petition filed and a nonsecure custody order obtained in accordance with this subdivision shall come on for hearing under the regular provisions of this Subchapter unless the director and the certifying physician together voluntarily dismiss the petition.

(2) In all cases except those described in subdivision (1) above, the director shall conduct his investigation and may initiate juvenile proceedings and take all other steps authorized by the regular provisions of this Subchapter. If the director decides not to file a petition, the physician, the administrator or his designee may ask the prosecutor to review this decision according to the provisions of G.S. 7A-546 and 7A-547.

(c) If, upon hearing, the court determines that the child is found in a county other than the county of legal residence, in accord with G.S. 153A-257, the child may be transferred, in accord with G.S. 7A-647(2), to the custody of the department of social services in the county of residence.

(d) If the court, upon inquiry, determines that the medical treatment rendered was necessary and appropriate, the cost of that treatment may be charged to the parents, guardian, custodian, or caretaker, or, if the parents are unable to pay, to the county of residence in accordance with G.S. 7A-647(3) and 7A-650.

(e) Except as otherwise provided, a petition begun under this section shall proceed in like manner with petitions begun under G.S. 7A-544.

(f) The procedures in this section are in addition to, and not in derogation of, the child abuse and neglect reporting provisions of G.S. 7A-543 and the temporary custody provisions of G.S. 7A-571. Nothing in this section shall preclude a physician or administrator and a director of social services from following the procedures of G.S. 7A-543 and 7A-571 whenever these procedures are more appropriate to the juvenile's circumstances. (1979, c. 815, s. 1; 1981, c. 716, s. 2.)

§ 7A-550. Immunity of persons reporting.

Anyone who makes a report pursuant to this Article, cooperates with the county department of social services in any ensuing inquiry or investigation, testifies in any judicial proceeding resulting from the report, or otherwise participates in the program authorized by this Article, is immune from any civil or criminal liability that might otherwise be incurred or imposed for such action provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed. (1979, c. 815, s. 1; 1981, s. 469, s. 8.)

§ 7A-551. Privileges not grounds for excluding evidence.

Neither the physician-patient privilege nor the husband-wife privilege shall be grounds for excluding evidence of abuse or neglect in any judicial proceeding (civil, criminal, or juvenile) in which a juvenile's abuse or neglect is in issue nor in any judicial proceeding resulting from a report submitted under this Article, both as said privileges relate to the competency of the witness and to the exclusion of confidential communications. (1979, c. 815, s. 1.)

§ 7A-552. Central registry.

The Department of Human Resources shall maintain a central registry of

abuse and neglect cases reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. This data shall be furnished by county directors of social services to the Department of Human Resources and shall be confidential, subject to policies adopted by the Social Services Commission which provide for its appropriate use for study and research. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law. (1979, c. 815, s. 1.)

§ 7A-586. Appointment and duties of guardian ad litem.

When in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a guardian ad litem to represent the juvenile. The appointment shall be made pursuant to the program established by Article 39 of this Chapter unless representation is otherwise provided pursuant to G.S. 7A-491 or G.S. 7A-492. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the child's legal rights within the proceeding. The duties of the guardian ad litem shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to explore options with the judge at the dispositional hearing; and to protect and promote the best interest of the juvenile until formally relieved of the responsibility by the judge. When the appointed guardian ad litem is not an attorney licensed to practice in the State of North Carolina, he may employ an attorney when the employment is authorized by the court and pursuant to Chapter 7A or request the appointment of an attorney to appear on behalf of the juvenile in the court proceeding and to assist the guardian ad litem by performing necessary and appropriate legal services on the juvenile's behalf, to present relevant facts to the judge at the adjudicatory hearing and to appeal, when advisable, from an adjudication or order of disposition to the Court of Appeals.

The judge may order the Department of Social Services or the guardian ad litem to conduct follow-up investigations to insure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met. The judge may also authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein he may be called on to testify in a matter relating to abuse.

The judge may grant the guardian ad litem the authority to demand any information or reports whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. Neither the physician-patient privilege nor the husband-wife privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem and no disclosure of any information or reports shall be made to anyone except by order of the judge. (1979, c. 815, s. 1; 1981, c. 528; 1983, c. 761, s. 159.)

§ 7A-647. Dispositional alternatives for delinquent, undisciplined, abused, neglected, or dependent juvenile.

The following alternatives for disposition shall be available to any judge exercising jurisdiction, and the judge may combine any of the applicable alter-

natives when he finds such disposition to be in the best interest of the juvenile:

(1) The judge may dismiss the case, or continue the case in order to allow the juvenile, parent, or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that he be supervised in his own home by the Department of Social Services in his county, a court counselor or other personnel as may be available to the court, subject to conditions applicable to the parent or the juvenile as the judge may specify; or

b. Place him in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place him in the custody of the Department of Social Services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the Department of Social Services in the county where he is found so that agency may return the juvenile to the responsible authorities in his home state. Any department of social services in whose custody or physical custody a juvenile is placed shall have the authority to arrange for and provide medical care as needed for such juvenile.

(3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist or other qualified expert as may be needed for the judge to determine the needs of the juvenile. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, he shall allow the parent or other responsible persons to arrange for care. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of such care pursuant to G.S. 7A-650. If the judge finds the parent is unable to pay the cost of care, the judge may charge the cost to the county. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is mentally retarded the judge shall refer him to the area mental health, mental retardation, and substance abuse director or local mental health director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, mental retardation, and substance abuse director or local mental health director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet his needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, mental retardation, and substance abuse health director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health, mental retardation, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall submit to the judge a written report

setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question. (1979, c. 815, s. 1; 1981, c. 469, s. 19.)

Prevention of Child Abuse and Neglect

§ 110-147. Purpose.

It is the expressed intent of this Article to make the prevention of child abuse and neglect as defined in G.S. 7A-517, a priority of this State and to establish the Children's Trust Fund as a means to that end. (1983, c. 894, s. 1.)

§ 110-148. Council on Prevention of Child Abuse and Neglect.

(a) For purposes of implementing this program, the State Board of Education shall designate the Interagency Advisory Council on Community Schools in the Department of Public Instruction as the Advisory Council on Prevention of Child Abuse and Neglect, hereinafter called the Council.

(b) Staff and support services for implementing this program shall be provided by the Division of Community Schools in the Department of Public Instruction.

(c) In order to carry out the purposes of this Article:

(1) The Council shall, with the assistance of the Division of Community Schools, review applications and make recommendations to the State Board of Education concerning the awarding of contracts pursuant to this Article.

(2) The State Board of Education shall contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to operate community-based educational and service programs designed to prevent the occurrence of child abuse and neglect. Every contract entered into by the State Board of Education shall contain provisions that at least twenty-five percent (25%) of the total funding required for a program be provided by the administering organization in the form of in-kind or other services and that a mechanism for evaluation of services provided under the contract be included in the services to be performed. In addition, every proposal to the Council for funding pursuant to this Article shall include assurances that the proposal has been forwarded to the local Department of Social Services for comment so that the Council may consider coordination and duplication of effort on the local level as criteria in making recommendations to the State Board of Education.

(3) The State Board of Education shall, with the assistance of the Division of Community Schools, develop appropriate guidelines and criteria for awarding contracts pursuant to this Article. These criteria shall include, but not be limited to: documentation of need within the proposed geographical impact area; diversity of geographical areas of programs funded pursuant to this Article; demonstrated effectiveness of the proposed strategy or program for preventing child abuse and neglect; reasonableness of implementation plan for achieving stated objectives; utilization of community resources including volunteers; provision for an evaluation component that will provide outcome data;

plan for dissemination of the program for implementation in other communities; and potential for future funding from private sources.

(4) The State Board of Education shall, with the assistance of the Division of Community schools, develop guidelines for regular monitoring of contracts awarded pursuant to this Article in order to maximize the investments in prevention programs by the Children's Trust Fund and to establish appropriate accountability measures for administration of contracts.

(5) The State Board of Education shall, with the assistance of the Division of Community Schools, report to the General Assembly at the time of its convening on odd-numbered years the use of these funds and shall develop a State plan for the prevention of child abuse and neglect for submission to the Governor, the President of the Senate, and the Speaker of the House no later than January 1, 1987.

(d) To assist in implementing this Article, the State Board of Education may accept contributions, grants, or gifts in cash or otherwise from persons, associations, or corporations. All moneys received by the State Board of Education from contributions, grants or gifts and not through appropriation by the legislature shall be deposited in the Children's Trust Fund. Disbursements of the funds shall be on the authorization of the State Board of Education or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control, such funds shall be subject in all respects to State law and regulations, but no appropriation shall be required to permit expenditure of the funds. (1983, c. 894, s. 1.)

§ 110-149. Programs.

(a) Programs contracted for under this Article are intended to prevent child abuse and neglect. Child abuse and neglect prevention programs are defined to be those programs and services which impact on children and families before any substantiated incident of child abuse or neglect has occurred. Such programs may include, but are not limited to:

(1) Community-based educational programs on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, and coping with family stress; and

(2) Community-based programs relating to crisis care, aid to parents, and support groups for parents and their children experiencing stress within the family unit.

(b) No more than twenty percent (20%) of each year's total awards may be utilized for funding State level programs to coordinate community-based programs. (1983, c. 894, s. 1.)

§ 110-150. Children's Trust Fund.

There is established a fund to be known as the "Children's Trust Fund," in the State Treasurer's office, which shall be funded pursuant to G.S. 161-11.1, and which shall be used by the State Board of Education to fund child abuse and neglect prevention programs so authorized by this Article. (1983, c. 894, s. 1.)

Confidentiality of Social Services Records

§ 108A-80. Confidentiality of records.

(a) Except as provided in (b) below, it shall be unlawful for any person to

obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal rules and regulations and the rules and regulations of the Social Services Commission or the Department.

(b) The Department shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all recipients of Aid To Families with Dependent Children and State-County Special Assistance for Adults, their addresses, and the amounts of the monthly grants. This register shall be a public record open to public inspection during the regular office hours of the county auditor, but said register or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a misdemeanor.

(c) Any listing of recipients of benefits under any public assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed public assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a general misdemeanor.

(d) The Social Services Commission shall have the authority to adopt rules and regulations governing access to case files for social services and public assistance programs, except the Medical Assistance Program. The Secretary of the Department of Human Resources shall have the authority to adopt rules and regulations governing access to medical assistance case files. (1937, c. 288, ss. 18, 48; 1939, c. 395, s. 1; 1957, c. 100, s. 1; 1969, c. 546, s. 1; cc. 735, 754; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 19; 1981, c. 275, s. 1; c. 419, s. 4.)

Selected Criminal Statutes Relating to Children

§ 14-316.1. Contributing to delinquency and neglect by parents and others.

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7A-517 shall be guilty of a misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the Department of Human Resources under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the Division of Youth Services who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile. (1919, c. 97, s. 19; C.S., s. 5057; 1959, c. 1284; 1969, c. 911, s. 4; 1971, c. 1180, s. 5; 1979, c. 692; 1983, c. 175, ss. 8, 10; c. 720, s. 4.)

§ 14-318. Exposing children to fire.

If any person shall leave any child under the age of eight years locked or otherwise confined in any dwelling, building or enclosure, and go away from such dwelling, building or enclosure without leaving some person of the age of discretion in charge of the same, so as to expose the child to danger by fire, the person so offending shall be guilty of a misdemeanor, and shall be punished at the discretion of the court. (1893, c. 12; Rev., s. 3795; C.S., s. 4443; 1983, c. 175, s. 9, 10; c. 720, s. 4.)

§ 14-318.2. Child abuse a general misdemeanor.

(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the misdemeanor of child abuse.

(b) The misdemeanor of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies, and is punishable as provided in G.S. 14-3(a). (1965, c. 472, s. 1; 1971, c. 710, s. 6.)

§ 14-318.4. Child abuse a felony.

(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child who intentionally inflicts any serious physical injury which results in:

(1) Permanent disfigurement, or
(2) Bone fracture, or
(3) Substantial impairment of physical health, or
(4) Substantial impairment of the function of any organ, limb, or appendage of such child,

is guilty of child abuse and shall be punished as a Class I felon.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class I felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class I felony.

(1979, c. 897, s. 1; 1979, 2nd Sess., c. 1316, s. 18; 1983, c. 653, s. 1; c. 916, § 1.)

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies. (1979, c. 897, s. 1; 1979, 2nd Sess., c. 1316, s. 18.)

§ 14-320. Separating child under six months old from a custodial parent.

It shall be unlawful for any person to separate or aid in separating any child under six months old from a parent legally entitled to custody of the child for the purpose of placing such child in a foster home or institution, or with the intent to remove it from the State for such purpose, without the written consent of either the county director of social services of the county in which the parent legally entitled to custody of the child resides, or of the county in which the child was born or of a private child-placing agency duly licensed by the Social Services Commission; but the written consent of any of the officials named in

this section shall not be necessary for a child when the parent legally entitled to custody of the child places the child with relatives or in a boarding home or institution inspected by the Department of Human Resources and licensed by the Social Services Commission. The consent when required shall be filed in the records of the official or agency giving consent. Any person or agency violating the provisions of this section shall, upon conviction, be fined not exceeding five hundred dollars ($500.00) or imprisoned for not more than one year, or both, in the discretion of the court. (1917, c. 59; 1919, c. 240; C. S., s. 4445; 1939, c. 56; 1945, c. 669; 1949, c. 491; 1965, c. 356; 1969, c. 982; 1973, c. 476, s. 138; 1979, c. 779.)

§ 14-322.1. Abandonment of child or children for six months.

Any man or woman who, without just cause or provocation, willfully abandons his or her child or children for six months and who willfully fails or refuses to provide adequate means of support for his or her child or children during the six months' period, and who attempts to conceal his or her whereabouts from his or her child or children with the intent of escaping his lawful obligation for the support of said child or children, shall be punished as a Class I felon. (1963, c. 1227; 1979, c. 760, s. 5; 1983, c. 653, s. 2.)

§ 14-190.12. Sexual performance by child.

(a) The use of a child in a sexual performance or the promotion of such a performance by a child shall be punished as a Class I felony. A person is guilty of the use of a child in a sexual performance if, knowing the character and content of the performance, he employs, authorizes, or induces a child whom he knows or reasonably should know is less than 16 years of age to engage in such performance. The parent, legal guardian, or custodian of a child less than 16 years of age is guilty of the use of a child in a sexual performance if he consents to the child's participation in such performance. A person is guilty of the promotion of a sexual performance by a child if, knowing the character and content of the performance, he produces, directs, or promotes such performance by a child who he knows or reasonably should know is less than 16 years of age.

For purposes of this section, promotion includes manufacture, delivery, or dissemination. A sexual performance is any play, motion picture, photograph, dance, or other visual presentation exhibited before an audience which includes sexual intercourse, buggery, bestiality, masturbation, sadomasochism, or lewd and lascivious exhibition of the genitals by a child less than 16 years of age.

(b) In addition to any other penalty imposed by law, a person found guilty of violating subsection (a) may be remanded by the court to a State authorized psychiatric facility to receive treatment and counseling for at least 90 days, to be served as a concurrent portion of any imposed sentence. (1983, c. 916, s. 3.)

Protection of the Abused, Neglected or Exploited Disabled Adult Act

§ 108A-99. Short title.

This Article may be cited as the "Protection of the Abused, Neglected, or

Exploited Disabled Adult Act." (1973, c. 1378; s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-100. Legislative intent and purpose.

Determined to protect the increasing number of disabled adults in North Carolina who are abused, neglected, or exploited, the General Assembly enacts this Article to provide protective services for such persons. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-101. Definitions.

(a) The word "abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.

(b) The word "caretaker" shall mean an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.

(c) The word "director" shall mean the director of the county department of social services or his representative in the county in which the person resides or is present.

(d) The words "disabled adult" shall mean any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

(e) A "disabled adult" shall be "in need of protective services" if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services.

(f) The words "district court" shall mean the judge of that court.

(g) The word "emergency" refers to a situation where (i) the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately, (ii) the disabled adult is unable to consent to services, (iii) no responsible, able, or willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize procedure provided in G.S. 108A-105.

(h) The words "emergency services" refer to those services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.

(i) The words "essential services" shall refer to those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words "essential services" shall not include taking the person into physical custody without his consent except as provided for in G.S. 108A-106 and in Chapter 122 of the General Statutes.

(j) The word "exploitation" means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.

(k) The word "indigent" shall mean indigent as defined in G.S. 7A-450.

(l) The words "lacks the capacity to consent" shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination.

(m) The word "neglect" refers to a disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving services from his caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, he is a resident of one of the State-owned hospitals for the mentally ill, centers for the mentally retarded or North Carolina Special Care Center he is, in the opinion of the professional staff of that hospital or center, mentally incompetent to give his consent to medical treatment, he has no legal guardian appointed pursuant to Chapter 33, Chapter 35, or guardian as defined in G.S. 122-36(n), and he needs medical treatment.

(n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult. (1973, c. 1378, s. 1; 1975, c. 797; 1979, c. 1044, ss. 1-4; 1981, c. 275, s. 1.)

§ 108A-102. Duty to report; content of report; immunity.

(a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.

(b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.

(c) Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-103. Duty of director upon receiving report.

(a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the disabled adult needs protective services.

(b) The staff and physicians of local health departments, mental health clinics, and other public or private agencies shall cooperate fully with the

director in the performance of his duties. These duties include immediate accessible evaluations and in-home evaluations where the director deems this necessary.

(c) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-104. Provision of protective services with the consent of the person; withdrawal of consent; caretaker refusal.

(a) If the director determines that a disabled adult is in need of protective services, he shall immediately provide or arrange for the provision of protective services, provided that the disabled adult consents.

(b) When a caretaker of a disabled adult who consents to the receipt of protective services refuses to allow the provision of such services to the disabled adult, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult.

(c) If a disabled adult does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-105. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc.

(a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.

(b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17. If the person is indigent, the cost of representation shall be borne by the State.

(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such

an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with Chapter 35, Article 1A, or G.S. 33-7, as appropriate; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with Chapter 35, Article 1A, or G.S. 33-7, as appropriate. No disabled adult may be committed to a mental health facility under this Article.

(d) A determination by the court that a person lacks the capacity to consent to protective services under the provisions of this Chapter shall in no way affect incompetency proceedings as set forth in Chapters 33, 35 or 122 of the General Statutes of North Carolina, or any other proceedings, and incompetency proceedings as set forth in Chapters 33, 35, or 122 shall have no conclusive effect upon the question of capacity to consent to protective services as set forth in this Chapter. (1973, c. 1378, s. 1; 1975, c. 797; 1977, c. 725, s. 3, 1979, c. 1044, s. 5; 1981, c. 275, s. 1.)

§ 108A-106. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises; immunity of petitioner.

(a) Upon petition by the director, a court may order the provision of emergency services to a disabled adult after finding that there is reasonable cause to believe that:

(1) A disabled adult lacks capacity to consent and that he is in need of protective service;

(2) An emergency exists; and

(3) No other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services.

(b) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than 14 days, the director shall petition the court in accordance with G.S. 108A-105.

(c) The petition for emergency services shall set forth the name, address, and authority of the petitioner; the name, age and residence of the disabled adult; the nature of the emergency; the nature of the disability if determinable; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (a) above; and facts showing petitioner's attempts to obtain the disabled adult's consent to the services.

(d) Notice of the filing of such petition, and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention; provided, however, that the court may issue immediate emergency order ex parte upon finding as fact (i) that the conditions specified in G.S. 108A-106(a) exist; (ii) that there is likelihood that the disabled adult may suffer irreparable injury or death if such order be delayed; and (iii) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such service; and such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or at any time within 20 days thereafter and show cause, if any exist, for the dissolution or modification of the said order, otherwise same to remain in effect; and copies of the said order together with such other appropriate notices as the

court may direct shall be issued and served upon all of the interested parties designated in the first sentence of this subsection.

(e) Where it is necessary to enter a premises without the disabled adult's consent after obtaining a court order in compliance with subsection (a) above, the representative of the petitioner shall do so.

(f) (1) Upon petition by the director, a court may order that:

a. The disabled adult's financial records be made available at a certain day and time for inspection by the director or his designated agent; and

b. The disabled adult's financial assets be frozen and not withdrawn, spent or transferred without prior order of the court.

(2) Such an order shall not issue unless the court first finds that there is reasonable cause to believe that:

a. A disabled adult lacks the capacity to consent and that he is in need of protective services;

b. The disabled adult is being financially exploited by his caretaker; and

c. No other person is able or willing to arrange for protective services.

(3) Provided, before any such inspection is done, the caretaker and every financial institution involved shall be given notice and a reasonable opportunity to appear and show good cause why this inspection should not be done. And, provided further, that any order freezing assets shall expire ten days after such inspection is completed, unless the court for good cause shown, extends it.

(g) No petitioner shall be held liable in any action brought by the disabled adult if the petitioner acted in good faith. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-107. Motion in the cause.

Notwithstanding any finding by the court of lack of capacity of the disabled adult to consent, the disabled adult or the individual or organization designated to be responsible for the disabled adult shall have the right to bring a motion in the cause for review of any order issued pursuant to this Article. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-108. Payment for essential services.

At the time the director, in accordance with the provisions of G.S. 108A-103 makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such essential services, they shall be provided at no cost to the recipient of the services. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-109. Reporting abuse.

Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-110. Funding of protective services.

Any funds appropriated by counties for home health care, boarding home, nursing home, emergency assistance, medical or psychiatric evaluations, and

other protective services and for the development and improvement of a system of protective services, including additional staff, may be matched by State and federal funds. Such funds shall be utilized by the county department of social services for the benefit of disabled adults in need of protective services. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-111. Adoption of standards.

The Department and the administrative office of the court shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of the provisions of this Article. (1975, c. 797; 1981, c. 275, s. 1.)

Selected Criminal Statutes Relating to Adults

§ 14-32.1. Assaults on handicapped persons; punishments.

(a) For purposes of this section, a "handicapped person" is a person who has:
(1) A physical or mental disability, such as decreased use of arms or legs, blindness, deafness, mental retardation or mental illness; or
(2) Infirmity
which would substantially impair that person's ability to defend himself.
(b) Any person who assaults a handicapped person with a deadly weapon with intent to kill and inflicts serious injury is guilty of a Class F felony.
(c) Any person who assaults a handicapped person with a deadly weapon and inflicts serious injury is guilty of a Class G felony.
(d) Any person who assaults a handicapped person with a deadly weapon with intent to kill is guilty of a Class G felony.
(e) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any aggravated assault or assault and battery on a handicapped person is guilty of a Class I felony. A person commits an aggravated assault or assault and battery upon a handicapped person if, in the course of the assault or assault and battery, that person:
(1) Uses a deadly weapon or other means of force likely to inflict serious injury or serious damage to a handicapped person; or
(2) Inflicts serious injury or serious damage to a handicapped person; or
(3) Intends to kill a handicapped person.
(f) Any person who commits a simple assault or battery upon a handicapped person is guilty of a misdemeanor punishable by a fine, imprisonment for not more than one year, or both. (1981, c. 780, s. 1.)

§ 14-326.1. Parents; failure to support.

If any person being of full age, and having sufficient income after reasonably providing for his or her own immediate family shall, without reasonable cause, neglect to maintain and support his or her parent or parents, if such parent or parents be sick or not able to work and have not sufficient means or ability to maintain or support themselves, such person shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding five hundred dollars ($500.00) or by imprisonment not exceeding six months, or both, in the discretion of the court; upon conviction of a second or subsequent offense he or she shall be punished by fine or by imprisonment not exceeding two years, or both, in the discretion of the court.

If there be more than one person bound under the provisions of the next preceding paragraph to support the same parent or parents, they shall share equitably in the discharge of such duty. (1955, c. 1099; 1969, c. 1045, s. 3.)

§14-32.2. Abuse, neglect or exploitation of disabled adult.

The abuse, neglect or exploitation of a disabled adult by his caretaker or agent or employee of his caretaker, as the terms "abuse", "caretaker", "disabled adult", "exploitation" and "neglect" are defined in G.S. 108A-101, is a misdemeanor.

This act is effective October 1, 1983, and shall apply only to Haywood County. (1983, c. 901, ss 1-2.)

COMPARISON OF CHILD AND ADULT REPORTING LAWS

List of Features	Child Abuse and Neglect Reporting Law	Disabled Adult Reporting Law
Type of law	Mandatory reporting law	Mandatory reporting law
Sanctions for Failure to Report		
Criminal	None	None
Civil	No statutory civil sanctions but failure to report when a person has a legal duty to do so could subject him to civil liability if the child receives further injuries or dies.	No statutory civil sanctions but failure to report when a person has a legal duty to do so could subject him to civil liability if the disabled adult is subject to further neglect, abuse, or exploitation and is injured or dies as a result.
Who must report?	Any person or institution who has cause to suspect that a juvenile is abused or neglected must report.	Any person who has reasonable cause to believe that a disabled adult is in need of protective services must report.
What is reportable?	Suspected abuse or neglect of anyone under 18 who is not married or a member of the armed services and has not been judicially emancipated.	Information about a physically or mentally incapacitated person over 18, or under 18 and lawfully emancipated, who is believed to be abused, neglected, or exploited and in need of protective services.
What is abuse?	Conduct by a parent or caretaker (1) intentionally inflicting serious physical injury; or (2) allowing the intentional infliction of serious physical injury or a substantial risk thereof; or (3) committing or allowing any illegal sex act or prostitution; or (4) creating or allowing serious emotional damage and refusing treatment; or (5) encouraging or approving certain delinquent acts.	Willful infliction of physical pain, injury or mental anguish; unreasonable confinement; willful deprivation by a caretaker of services necessary for mental or physical health.
What is neglect?	Failure to provide proper care, supervision, or discipline; abandonment; failure to provide necessary medical or remedial care; allowing child to live in an injurious environment; placing child for care or adoption in violation of law.	Living alone and being unable to provide services necessary for physical and mental health; failure of caretaker to provide necessary services.
What is exploitation?	Term not used.	Illegal or improper use of a disabled adult or his resources for another's profit or advantage.

Who is a caretaker?	Any nonparent who cares for a child, including any blood relative, stepparent, foster parent, house parent, cottage parent, or person who supervises a juvenile in a child-care facility.	Any person who is responsible for the care of a disabled adult as a result of family relationship or assumes such responsibility voluntarily or by contract.
What are protective services?	Services to parents or caretakers to prevent child abuse or neglect, to improve the quality of child care, to improve parenting skills, and to preserve family life.	Services necessary to protect the adult from abuse, neglect, or exploitation, including evaluation of the need for services and arranging for services to be provided.
Where to report?	County department of social services	County department of social services
How to report?	Oral, written, by telephone	Oral, written, by telephone
What must be included in the report?	Whatever information the reporter has, ideally including name, address, age, whereabouts of child; name and address of parents or caretakers; nature and extent of abuse or neglect. If the report is oral or by telephone, the reporter must give his name, address, and telephone number.	Whatever information the reporter has, ideally including name, address, age of disabled adult; name and address of caretaker; nature and extent of injury, abuse, neglect, exploitation; other pertinent information.
Protection to reporter or witness in a case resulting from report	Any person who reports, is a witness in a court case resulting from a report, gives information, or participates in the program is immune from civil or criminal liability if he acts in good faith.	Any person who reports, testifies in any court action arising from the report, or participates in a required evaluation is immune from civil or ciminal liability unless he acts in bad faith or with malice.
Identity of reporter	Reporting law requires that information received by county department of social services be held in strictest confidence. General social services law (G.S. 108A-80) prohibits disclosure of information except for purposes directly connected with administration of program.	Reporting law does not specify whether county department of social services may release the name of the reporter. General social services law (G.S. 108A-80) prohibits disclosure of information except for purposes directly connected with administration of programs.
Duty of county department of social services following report	Make a "prompt and thorough investigation" to determine facts and evaluate extent of abuse or neglect. Report the case to the central registry in Department of Human Resources.	Make a "prompt and thorough evaluation" to determine whether the disabled adult needs protective services and what services are needed. Director must then make written report indicating whether protective services are needed.
Right of reporter to notice of results of investigation	Unless a juvenile court petition is filed within five working days after a report, county department of social services must give reporter written notice stating either (1) that there is no finding of abuse or neglect, or (2) what specific action department is taking to protect the child. Notice must tell reporter that he can seek review of the agency's decision.	Department of social services must notify reporter of the determination as to whether the disabled adult needs protective services. No requirement that notice be in writing.

List of Features	Child Abuse and Neglect Reporting Law	Disabled Adult Reporting Law
Provisions for review of determination by department of social services.	Reporter has five working days after receiving notice of agency's determination to ask district attorney to review the decision not to file a petition. District attorney must conduct review—including conferences with reporter, protective services worker, the child if practicable, and others with information—within 20 days after agency's notice to reporter, and can affirm agency's decision or authorize filing of a petition.	None.
What if the county social services department finds neglect or abuse?	Protective services must be provided. Director must decide whether the child must be removed from his home for his protection; if the director decides for removal, he must sign juvenile petition so that the court may decide custody issue. If immediate removal of child is not necessary, the director must provide or arrange for protective services.	Director must provide or arrange for protective services if the disabled person consents.
What if child's parent or the disabled adult's caretaker does not agree to protective services?	Director must sign juvenile petition to begin court action for the child's protection.	If the disabled adult consents but the caretaker objects to protective services, the director may petition district court for an order enjoining caretaker interference.
Rights of the child or disabled adult	Following a report, the child has a right to protection under established procedures, usually by protective services to his parents. If a juvenile petition is filed, he has a right to have a guardian ad litem appointed to represent him.	A disabled adult has the right to consent or refuse to consent to protective services; if he does not consent or withdraws his consent, the services may not be provided. If the director determines that a disabled adult is being abused, neglected, or exploited but lacks the capacity to consent to protective services, he may petition district court for an order authorizing these services.
Emergency procedures	Procedures are available to assume immediate temporary custody of a child believed to be abused or neglected before a court hearing when necessary to prevent injury.	In emergencies in which a disabled adult lacks the capacity to consent and needs protective services, the director may petition the district court for an order authorizing emergency services, including the authority to enter the person's home.
Information to be reported to district attorney by county department of social services	Evidence that a child has been abused and information that a child has been physically harmed by someone other than a parent or caretaker in violation of the criminal law must be reported.	Evidence that any person has abused, neglected, or exploited a disabled adult must be reported. Cases of self-neglect are not reported to the district attorney.

Authority of hospital or medical facility to retain temporary custody	When a hospital or medical facility feels it unsafe to release an abused child from a hospital or facility to his parents or caretaker, a procedure is provided for assuming temporary custody for protective purposes.	No such authority for hospital or medical facility.
Provision for a central registry of data of reported abuse and neglect	The state Department of Human Resources is required to maintain a central registry; data in it are confidential except as Social Services Commission policies permit their use for study and research; county departments must enter all reported cases, whether or not confirmed.	None. The Department of Human Resources has data regarding the number of disabled adults who actually receive protective services.
Duties of other agencies	State and local law enforcement must help investigate and evaluate report of abuse when requested by the county director; the director may use staff of other public and private agencies in performing his duties.	Staff and physicians of local health departments, mental health clinics, and other public or private agencies must "cooperate fully" with the director in performing his duties, including making immediate accessible evaluations and in-home evaluations where the social services director deems this necessary.
Payment for services	No provision for payment for protective services.	No payment required for protective services. Adult capable of paying for essential services is to make reimbursement for costs of providing them. If adult is not capable of paying, essential services must be provided at no cost to recipient. Ability to pay is determined by standards set by the Social Services Commission.
Waiver of privileges under law of evidence	Both physician-patient and husband-wife privilege are waived in any judicial proceeding in which child abuse or neglect is in issue. Court has discretion to compel disclosure of most other privileged communications.	No provision in reporting law for waiver of evidentiary privileges, but court has discretion to compel disclosure of most privileged communications.
Authority for standards, procedures, guidelines, forms	None in reporting law. State Social Services Commission has general rule-making authority. State Division of Social Services issues policies and guidelines in program manuals. Administrative Office of the Courts issues standard juvenile court forms.	Department of Human Resources and Administrative Office of the Courts must adopt standards and procedures and guidelines with forms for effective implementation.

Source: Adapted from *Protective Services in North Carolina*, by Mason P. Thomas, Jr. (Institute of Government, The University of North Carolina at Chapel Hill, 1976), pp. 12-16.

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1985-86 UPDATE

Abuse and Neglect of Children and Disabled Adults:

North Carolina's Mandatory Reporting Laws

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Introduction

The 1985 session of the North Carolina General Assembly enacted several pieces of legislation affecting services to abused and neglected children and disabled adults. This update discusses those changes as they affect the contents of the 1984 edition of "Abuse and Neglect of Children and Disabled Adults: North Carolina's Mandatory Reporting Laws." [Other 1985 changes relating to children are described in *Summary of 1985 North Carolina Legislation Affecting Children* and *1985 North Carolina Legislation on Child Day Care*, which are available from the Institute of Government for $1.00 per copy plus 3 per cent sales tax (4½ per cent in Orange County).] This update also discusses nonlegislative developments relating to liability for failure to comply with the reporting law. Numbers in parentheses refer to the page or pages of the 1984 edition to which the change relates. Statutory references to new provisions appear in brackets.

Child Abuse and Neglect

What acts or conditions must be reported? (7-8) The Juvenile Code's definition of "neglected juvenile" was not itself amended; but for purposes of what must be reported, it was affected by two changes in other provisions. (1) A neglected juvenile includes one who does not receive proper care, supervision, or discipline from his parent, guardian, custodian, or *caretaker;* the definition of "caretaker" was amended. It now specifically includes any adult who is present, with the approval of the care provider, in a day-care plan or facility. [G.S. 7A-517(5) (1985 Supp.)] (2) A neglected juvenile may also be one who has been placed for care or adoption in violation of law. The criminal statute that requires agency approval for certain placements of children under six months of age was amended to delete that requirement for private-placement adoption. [G.S. 14-320 (1985 Supp.)] Thus, private placement for adoption without prior agency approval is not, by itself, a placement in violation of the law that would render the child neglected under the Juvenile Code.

The part of the Juvenile Code definition of "abused juvenile" that addresses sexual abuse was broadened. It now includes any juvenile whose parent or other person responsible for his care:

1. commits, permits, or encourages the commission of
   a. vaginal intercourse, or
   b. any sexual act, or
   c. the obscene or pornographic photographing, filming or depicting of a child in those acts for commercial or non-commercial use, or
   d. any other offense against public morality and decency provided for in Article 26, Chapter 14 by, with, or upon a juvenile in violation of law (such acts include incest, taking indecent liberties with children, and crimes relating to obscenity and sexually oriented materials); or

2. commits, permits or encourages any act of prostitution with or by the juvenile. [G.S. 7A-517(1)c. (1985 Supp.)]

An administrative rule issued in 1985 by the State Social Services Commission expands the definition of "neglected child." The rule, 10 N.C.A.C. 41I .0303(2), provides as follows:

> A neglected child is also a disabled infant with a life-threatening condition from whom appropriate nutrition, hydration or medication is being withheld; a neglected child is also a disabled infant under one year of age with a life threatening condition from whom medically indicated treatment, which in the treating physician's reasonable medical judgment would be most likely to be effective in ameliorating or correcting such life threatening conditions, is being withheld, unless in the treating physician's reasonable medical judgment any of the following conditions exist:
>
> (a) [the] infant is chronically ill and irreversibly comatose; or
> (b) the provision of medical treatment would merely prolong dying, would not ameliorate or correct all of the life threatening conditions, or would otherwise be futile in terms of the survival of the infant; or
> (c) the provision of medical treatment would be virtually futile in terms of the survival of the infant and under the circumstances the treatment would be inhumane.
>
> The term "infant" means a child less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any other protection regarding medical neglect of children over one year of age.

As to whether abuse by school teachers or other part-time care-providers must be reported, see the discussion under "What are the consequences of not reporting?" on page 4.

Investigation. (11-12) The times within which a social services department must initiate an investigation of reported abuse or neglect—within 24 hours for abuse and 72 hours for neglect—are now mandated by law as well as by state policy. [G.S. 7A-544 (1985 Supp.)]

Day-care abuse or neglect. (New) If a social services director receives a report that involves abuse or neglect of a juvenile in a day-care plan or facility, he must notify the North Carolina Child Day Care Commission within 24 hours or on the next working day; he must also notify the Commission of the results of the social services investigation of the report. If the social services director finds evidence that a juvenile has been abused or neglected in a day-care plan or facility, he is required to notify the Child Day Care Commission immediately in a way that does not violate the law guaranteeing the confidentiality of social services records. [G.S. 7A-548 (1985 Supp.)]

Criminal prosecution for abuse. (13-14) The maximum penalty for felony child abuse is now ten years instead of five. [G.S. 14-318.4 (1985 Supp.)] In addition, part of the definition of felony child abuse was rewritten to make it a felony to (a) intentionally inflict any serious physical injury on a child, or (b) intentionally commit an assault on a child that results in any serious physical injury to the child. [G.S. 14-318.4(a) (1985 Supp.)] The offense still applies only to conduct by a parent or other person who cares for or supervises a child younger than 16 years old. Before the amendment, the offense referred to the intentional infliction of any serious physical injury that results in permanent disfigurement, bone fracture, substantial impairment of physical health, or substantial impairment of the function of any organ, limb, or appendage of the child. Similar language still appears in the Juvenile Code's definition of "abused juvenile," even though it is no longer part of the definition of the crime of felony child abuse.

What are the consequences of not reporting? (15-16) The General Assembly took no action in 1985 in regard to civil or criminal liability for not reporting suspected child abuse or neglect. There is no statutory civil or criminal penalty. However, since 1984 two people have been criminally prosecuted in the state for a misdemeanor offense of failing to report child abuse. Charges were based on the common law (case law) theory that the failure to do what a statute affirmatively requires (or doing what a statute prohibits) constitutes a misdemeanor. Both cases resulted in convictions in district court. One case was not appealed. The other case was appealed to superior court; at this writing the outcome of that case is not known. These cases are not legal precedent for decisions in any other case; only a decision by an appellate court would have that effect. However, readers should be

aware that despite the absence of statutory penalties for failing to report, there is in North Carolina a common law theory that makes the failure to report suspected child abuse or neglect a crime. At least two district attorneys and two district court judges have found the theory convincing.

(7-8) In addition to this theory of common law crime, one of the cases involved the interpretation of the Juvenile Code's term "abused juvenile" for purposes of the reporting law. The conduct that the defendant was accused of not reporting was suspected abuse by a substitute teacher of children at school, not abuse by a parent. The Juvenile Code defines an "abused juvenile" as a juvenile whose parent *or other person responsible for his care* does one of several specified things. Except in regard to day-care personnel, who are explicitly covered by the statute, state and local social services agencies have generally interpreted the phrase "person responsible for his care"—as well as the term "caretaker" in the definition of "neglected juvenile"—to exclude part-time, nonparental types of care providers like school personnel. Possible arguments for such an interpretation might include (1) the primary responsibility for responding to the mistreatment of a child by such persons rests with the parents and the school; (2) protective intervention by a governmental agency is justified only when parents do not carry out their primary duty; and (3) the General Assembly, having specifically included day-care personnel, would have done the same with school personnel if it had intended for their acts to be covered by the reporting law. On the other hand, there are certainly many ways in which school personnel are "responsible for the care" of school children during school hours. Again, readers should note the uncertainty in this area. As in any other case of uncertainty in regard to reporting suspected abuse or neglect, it is better to risk making a report that may not be required than not to make one that might be required.

Pending legislation. The 1985 General Assembly will reconvene for its "short" or "budget" session in June 1986. Two bills that are pending for consideration in that session would, if passed, amend Juvenile Code provisions relating to child abuse and neglect. (1) Senate Bill 243, the "endangered child" bill, is aimed primarily at setting standards for determining when abused or neglected children should be removed from their homes and when they should be returned home if they are removed. The bill would also amend the definitions of "abused juvenile" and "neglected juvenile" in several respects, and thus would affect what must be reported. It would also authorize

a social services director to seek a court order (a) requiring a person to allow or cooperate in a child-abuse or neglect investigation or (b) prohibiting a person from obstructing or interfering with such an investigation. (2) House Bill 1203 would amend the definition of "neglected juvenile" to explicitly include certain disabled infants with life-threatening conditions from whom medically indicated treatment is being withheld. Other changes could result if these bills are passed in amended forms or if other legislation recommended by study committees that report to the short session is enacted.

The Institute of Government publishes a summary of new legislation after each legislative session.

Disabled Adults Who Need Protective Services

What must be reported? (19, footnote 27) A special category of neglected disabled adults includes certain institutionalized persons who need medical treatment and have neither a court-appointed guardian nor a guardian as defined in the statute concerning hospitals for the mentally disordered. That definition of "guardian" was rewritten [G.S. 122C-3(15) (1985 Supp.)] so that it now refers only to general guardians or guardians of the person appointed pursuant to G.S. Chapters 7A, 33, or 35. Thus the fact that the person designates someone as "closest relative" when he is admitted no longer means that he has a guardian for purposes of this special category of neglect. [G.S. 108A-101(m) (1985 Supp.)]

What happens after a report is made? (20-22) The social services director's authority in responding to a report about a disabled adult has been expanded. When necessary for a complete evaluation, the director may review and copy any records related to the care and treatment of the disabled adult that have been maintained by any person, facility, or agency acting as that person's caretaker. The director's use of information from such records is covered by confidentiality provisions for social services and mental health facilities. The director is also authorized to interview the disabled adult with no one else present. [G.S. 108A-103(a) (1985 Supp.)]

The Protection of the Abused, Neglected, or Exploited Disabled Adult Act was not amended in regard to criminal penalties for the mistreatment of disabled adults. However, a new law providing for the certification of adult day-care programs makes it a misdemeanor for any person, firm, agency, or corporation to harm or willfully neglect a person under its care. [G.S. 131D-6(c1)]

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What are the consequences of not reporting? (22-23) The 1985 General Assembly took no action in regard to civil or criminal liability for not reporting the case of a disabled adult in need of protective services. There is no statutory civil or criminal penalty. However, the common law theory described above for criminally prosecuting the failure to report child abuse would seem equally applicable to the mandatory reporting requirement for cases of disabled adults.

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